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*Attorneys for City and Library Defendants*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,  
CITY OF HAMILTON, LEE  
ENTERPRISES, INC., BOONE  
KARLBERG P.C., DR. ROBERT  
BROPHY, TRISTA SMITH, NANSU  
RODDY, JERRY STEELE, STEVE  
SNAVELY, STEVEN BRUNER-  
MURPHY, RYAN OSTER,  
KENNETH S. BELL, and JENNIFER  
LINT,

Defendants.

Cause No. CV-11-064-M-DWM-JCL

**CITY AND LIBRARY  
DEFENDANTS' LIABILITY  
EXPERT DISCLOSURE**

In accordance with the Court's Scheduling Order (Doc. 182) and Rule 26(a)(2)(C), Fed. R. Civ. P., the City and Library Defendants disclose the liability experts whom they expect to call as witnesses at the trial, if any, in this matter. The people listed below were not retained or specially employed by the City or Library Defendants to provide expert testimony in this case. Also, their job duties as an employee of a party do not regularly involve giving expert testimony. Rule 26(a)(2)(B), Fed. R. Civ. P.

A. Trista Smith, c/o Boone Karlberg P.C., 201 West Main, Suite 300, Missoula, Montana 59802:

1. Subject Matter of Opinion Testimony: The application of the right or freedom to read statements of the American Library Association ("ALA") to the collection decisions for the Bitterroot Public Library ("BPL").
2. Opinion and Basis: The decision not to add Mr. Pilkey's letter to President Obama ("the Obama letter") did not violate BPL policy, and the ALA's right or freedom to read statements do not apply to a decision whether or not to add an item to BPL's collection. The ALA's right to read statement applies to prisoners. Further, the ALA's right or freedom to read statements relate to access to information without censoring due to content. The ALA's statements do not relate to a decision on whether to add an item to BPL's collection. That

decision is a discretionary decision which involves a consideration of a number of factors unrelated to the ALA statements.

The criteria for deciding whether or not to add an item to BPL's collection includes:

- a. relationship and importance to the entire collection
- b. authoritativeness, reputation or qualification of the author, artist, publisher or producer
- c. significance of subject matter, permanence or timeliness of subject
- d. relevance to the needs of the community
- e. current demand
- f. accuracy, objectivity, clarity and logic of presentation
- g. suitability and format to library purposes; that is quality of technical production (binding, margins, typography, quality of paper, etc.)
- h. extent of publicity or critical review
- I. facility of use, difficulty of comprehensiveness
- j. inclusion of title and standard or special bibliography or indexes
- k. availability of material elsewhere

- l. date of publication
- m. price
- n. shelf space
- o. hard covers are preferred although some needed titles are available only in paperback
- p. duplicates may be added for high demand titles and children's classics, shelf space and budget allow

B. Dr. Robert Brophy, c/o Boone Karlberg P.C., 201 West Main, Suite 300, Missoula, Montana 59802:

1. Subject Matter of Opinion Testimony: Whether the decision to exclude Plaintiff from the BPL premises and building violated BPL policy.

2. Opinion and Basis: The decision to exclude Plaintiff from BPL's premises and building did not violate BPL policy and was not an abuse of discretion. BPL's Board of Trustees adopted rules for the government of the library and the effective use and management of the library. Those rules prohibit disruptive behavior. Further, the Board delegated the authority to BPL's Director to carry out the day-to-day management of BPL and to enforce the rules.

BPL exists to facilitate learning, cultural enrichment and quite contemplation. The BPL rules relating to disruptive behavior and the specific actions taken with regard to Plaintiff serve those purposes. Those actions were not

employed because of the content of Plaintiff's viewpoints, and Plaintiff has alternative means to express his thoughts, ideas and opinions.

Plaintiff's behavior was disruptive to BPL staff and patrons. On May 29, 2009, Plaintiff entered BPL. He wanted the Obama letter to be placed in the Library's reserve collection. Staff member Nansu Roddy refused. Plaintiff became angry. He raised his voice and acted angrily. He said he had already posted on his blog website that the Obama letter would be available at the BPL. He told Ms. Roddy that he would go to the next Library Board meeting to complain. He scared Ms. Roddy, enough that she reported the incident to BPL's Director, Gloria Langstaff.

Plaintiff sent a letter, dated June 8, 2009, to Ms. Langstaff and the Director of the North Valley Public Library concerning a refusal to add the Obama letter to the library's collections. The letter references a letter from the Unibomer "which advocated violence and condoned murder." The letter bothered both Directors. The Director of the North Valley Public Library contacted the Stevensville Police Chief about concerns for library staff safety.

On June 9, 2009, Ms. Langstaff wrote to Plaintiff again denying his request to submit the Obama letter to the library's collection. Ms. Langstaff's letter cited BPL's collection management policy. Ms. Langstaff welcomed Plaintiff to attend a Library Board meeting and address his request.

On June 11, 2009, Plaintiff came to the BPL. He demanded to see Ms. Langstaff. He raised his voice and began a tirade about wanting Ms. Langstaff fired. His conduct intimidated BPL staff. They felt anxious and unsafe. One member described Plaintiff's conduct as despicable. Another staff member went home to compose herself. As a result, the incident was reported to the Hamilton Police Department. Also, Ms. Langstaff sent Plaintiff a letter that he was excluded from the library premises and building for behavior which was disruptive to library users and staff. The action was taken to protect BPL staff from Plaintiff's confrontational and intimidating behavior which disrupted staff and patrons. It was taken to protect the enjoyment of the library by other patrons and to guard against another disruption.

Plaintiff's behavior following Ms. Langstaff's letter further supports Plaintiff's exclusion from the library. On June 12, 2009, Plaintiff went to the Hamilton Police Department about the library. He became agitated and loud. He warned Officer Auch that he was running for mayor and might be Officer Auch's boss in November.

On June 15, 2009, Plaintiff was seen outside the library building requesting patrons to deliver a message to Ms. Langstaff. On June 16, 2009, Plaintiff phoned the library asking to meet with Ms. Langstaff off premises. He also called the Library to have "his property" returned to him. On the same day, he emailed a

Library Board member. He said he was banned from the library because he told Ms. Langstaff that he would present information resulting in her termination. He stated that the Director was committing a crime with the Board acting as an accomplice. He warned that his computer page gets 500 hits a week and the page could be updated about the library.

On July 15, 2009, Plaintiff confronted a library patron to have a letter delivered to Ms. Langstaff. Among other things, Plaintiff stated in bold print that he was reinstating his own library privileges. The matter was reported to the Hamilton Police Department. In a phone message to Officer Auch on July 16, 2009, Plaintiff reaffirmed that he was reinstating his own library privileges. As a result, on July 23, 2009, the Library Board voted unanimously to support seeking an order of protection against Plaintiff.

On August 20, 2009, Plaintiff was seen in the library gazebo. Officer Snavelly contacted Plaintiff and warned him not to come back. Later, Plaintiff came back when three women were sitting in the gazebo. One woman, the woman who was present when Officer Snavelly contacted Plaintiff earlier, refused to give Plaintiff her name and phone number. When she acknowledged that she gave her name to Officer Snavelly, Plaintiff became angry. He yelled at the woman that the cops were the bad guys. He again left the area, but he came back with a video camera. He began filming the woman. The woman was taken aback. All three

women were nervous, and they felt threatened. As a result of the incident, Plaintiff was charged with trespass. The Library Board also sent Plaintiff a letter that it supported the decision to exclude Plaintiff from the library.

On August 25, 2009, Plaintiff wrote to the Library Board complaining of the exclusion. On the same day, he published on his Bitterroot Rising website that the library was working with the Hamilton Police Department to commit crimes and violate his rights. He said that embezzlement was occurring at the library. He said the library "was toast." He personally attacked Ms. Langstaff's personal appearance.

On September 9, 2009, the City Court issued its Conditions of Release relating to the trespass charge. Among other things, Plaintiff was precluded from contacting any witnesses or victims. Despite the conditions, Plaintiff confronted Ms. Roddy, a BPL staff member, on November 4, 2009. It scared her. As a result of the confrontation, she applied for and obtained an order of protection. Also, Plaintiff was charged with the crime of felony intimidation. Later, he entered a plea of *nolo contendere* to the charge.

Following Plaintiff's confrontation with Ms. Roddy on November 4, 2009, Plaintiff continued to attack BPL, its Board and its staff. He contacted the Montana Library Commission and the Montana State Library attacking BPL and its representatives. On April 25, 2011, he issued a written statement on the



Internet that BPL was opening a “pedophilia room” equipped to make “children feel more comfortable.”

C. Kenneth Bell and Ryan Oster, c/o Boone Karlberg P.C., 201 West Main, Suite 300, Missoula, Montana 59802:

1. Subject Matter of Opinion Testimony: Whether probable cause existed to arrest and charge Plaintiff with trespass and intimidation.

2. Opinion and Basis: Information existed to warrant a belief that Plaintiff committed the crime of trespass and felony intimidation. The basis of these opinions is the information forming the basis of the opinions of Dr. Brophy referred to above. That information is incorporated here by reference.

D. Kenneth Bell, c/o Boone Karlberg P.C., 201 West Main, Suite 300, Missoula, Montana 59802:

1. Subject Matter of Opinion Testimony: Whether one can trespass on public property.

2. Opinion and Basis: A person can trespass on public property. The fact that a person is on public property is not determinative of whether he or she can be charged with trespass:

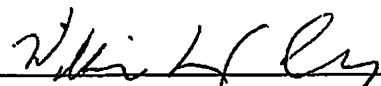
A person commits the offense of criminal trespass to property when he or she knowingly enters or remains unlawfully in an occupied structure or in or upon the premises of another. MCA § 45-6-203. Further, one enters or remains

unlawfully in an occupied structure or enters upon the premises of another when he or she is not licensed, invited or otherwise privileged to do so. MCA § 45-6-201.

BPL holds its premises and building in the name of the City of Hamilton and/or Ravalli County for the use and purposes of a library. The library exists to facilitate learning, cultural enrichment and quiet contemplation. At most, it is a limited public forum. As a limited public forum, BPL's premises and building are not open for the use of all members of the public regardless of their conduct. Members of the public may be excluded as long as the exclusion serves a valid purpose, is not based on expressive content and other alternatives exist for the person's communication. *Souders v. Lucero*, 196 F.3d 1040, 1043-46 (9<sup>th</sup> Cir. 1999); *U.S. v. Adams*, 388 F.3d 708 (9<sup>th</sup> Cir. 2004).

Here, Plaintiff's conduct was disruptive and intimidating to BPL staff and patrons. The conduct did not serve the purposes of a public library. Further, the ban was not based on Plaintiff's expressive content, and other alternatives existed for Plaintiff's communication.

DATED this 13<sup>th</sup> day of January, 2012.


  
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William L. Crowley  
BOONE KARLBERG P.C.  
*Attorneys for City and Library Defendants*

CERTIFICATE OF SERVICE

I hereby certify that, on the 13<sup>th</sup> day of January, 2012, a copy of the foregoing document was served on the following persons by the following means:

- \_\_\_\_\_ CM/ECF
- \_\_\_\_\_ Hand Delivery
- 2, 3   Mail
- \_\_\_\_\_ Overnight Delivery Service
- \_\_\_\_\_ Fax
- \_\_\_\_\_ E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury  
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3. Jeffrey B. Smith  
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